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August 19, 1996

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William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Video Programming Marketplace; CS Docket No. 96-133; FCC 96-265

Dear Mr. Caton:

Enclosed for filing is one original and nine copies of the Reply Comments of ESPN, Inc. in the above-referenced proceeding. Thank you for your help in this matter. Please do not hesitate to call me (860-584-4493) if there are any questions regarding this filing.

Very truly yours,

Michael J. Pierce
Counsel

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In re:)
)
Annual Assessment of the Status of) CS Docket No. 96-133
Competition in the Market for the)
Delivery of Video Programming)

REPLY COMMENTS OF ESPN, INC.

Edwin M. Durso
David R. Pahl
Michael J. Pierce

ESPN, Inc.
ESPN Plaza
Bristol, Connecticut 06010-7454

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Annual Assessment of the Status of) CS Docket No. 96-133
Competition in the Market for the)
Delivery of Video Programming)

To the Commission:

REPLY COMMENTS OF ESPN, INC.

ESPN, Inc. ("ESPN") hereby responds to comments filed by The Wireless Cable Association, Inc. ("WCAI") in the above referenced proceeding. Like last year, WCAI asks the Commission to recommend to Congress that Section 628 of the Communications Act be amended to apply the program access provisions to nonvertically integrated programmers.¹ ESPN believes that WCAI's arguments have no more merit than they did last year and, like last year, WCAI continues to provide no evidence for its allegations of "abuse." Moreover, by its recent passage of the Telecommunications Act of 1996 (the "1996 Act"), Congress has clearly indicated its distaste for the promulgation of new and unwarranted regulation. ESPN again, therefore, urges the Commission to reject any and all calls for intrusive regulatory oversight of an already functioning marketplace.

¹ See Comments of The Wireless Cable Association International, Inc. ("WCAI Comments") at p.22.

WCAI simply reoffers -- almost *verbatim* -- the same unsupported rationale for increased regulatory oversight that it did last year, *i.e.*, "events since the passage of the 1992 Cable Act demonstrate that loopholes exist which can be taken advantage of to deprive emerging multichannel video programming distributors ("MVPDs") of fair access to programming."² While WCAI's previous comments did not cite any such "events," this year WCAI points to an article in *Cable World*, a trade publication, in which certain unnamed operators are said to have warned existing programmers that if they don't "play ball" on exclusivity, other new and similar networks will. WCAI apparently believes this is the "specific evidence" the Commission needs to recommend a significant legislative undertaking to Congress.³ ESPN disagrees.

WCAI's almost complete reliance on an industry rumor reported in a trade publication clearly demonstrates the paucity of any real world evidence of abuse in this area. In summary, WCAI's warmed-over arguments are no more compelling this year than last (and, given the passage of the 1996 Act, less compelling, if that is possible.)⁴ Moreover, ESPN notes there was little, if any, support for this concept in the initial round of comments in this proceeding.

We strongly urge the Commission to flatly reject the call to unnecessarily and inappropriately intrude on the vendor-distributor relationship and add new regulatory burdens on unaffiliated programmers. Moreover, we again urge the Commission to

² WCAI Comments at p. 20.

³ WCAI Comments at pp. 21 - 22.

⁴ Like last year, WCAI's comments refer to and rely heavily on an article that appeared in 1995 in the *Federal Communications Law Journal* by Professor David Waterman of Indiana University: *Vertical Integration and Program Access in the Cable Television Industry*, 47 Fed. Comm. L.J. 511 (1995). ESPN discussed at length its view of Professor's Waterman's article in its Reply Comments in last year's proceeding.

affirmatively look for ways to limit the intrusiveness of the current program access rules into the marketplace and/or to recommend to Congress that they be eliminated entirely.

Respectfully submitted,

ESPN, Inc.

By


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